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12/28/40

CONCLUSIONS OF LAW

Upon the foregoing facts the Court finds the law to be:

1st. That the plaintiffs have the right to maintain the waters of Utah Lake to an elevation four feet and six inches below the top of the stone monument, near the head of Jordan River, which was established by the Utah Lake Commission in 1885; and said elevation is the point referred to in said contract as "three feet three and one half (3 ft. $3\frac{1}{2}$ in.) inches above the point heretofore established and recognized as low water mark in said Lake."

2nd. That a survey shall be made and a permanent monument shall hereafter be established and maintained at the expense of the plaintiffs in said Utah Lake at a point to be hereafter agreed upon by the parties hereto or fixed by the Court, between a point one mile north of Provo River, and a point five miles south of the mouth of said river, where it will be least subject to temporary fluctuations of the height of the water by winds or the influx or Spanish Fork and Provo Rivers, to perpetuate said agreed elevation; and that said monument when so established shall be maintained as the controlling evidence of the elevation at which the water of the said lake is authorized to be maintained by the said plaintiffs under said contract.

3rd. That the plaintiffs are entitled to at all times keep and maintain planks or other obstructions on the floor or sill of the new dam erected by them in the Jordan River to the height of fourteen (14) inches above the floor or sill of the said dam, and no more.

4th. That when at any time in each year the high water of Utah Lake shall have receded to the elevation fixed in the findings of *fact as four feet and six inches below the top of the said stone monument near the head of Jordan River, the same being* the point referred to in said contract as "three feet three and one-half inches (3 ft. 3½ in.) above the point heretofore established and recognized as low water mark in said lake", the plaintiffs have the right without hindrance from any person or persons, to keep and maintain planks or other obstructions in either or both of their said dams in Jordan River, to cause the waters of Utah Lake to be held back by regulating said dams to a height not to exceed the elevation hereinbefore designated, and keep said planks or other obstructions in said dams until the same are ordered out by the commissioners referred to in said contract; but said commissioners have no right to order the plaintiffs to remove said planks or other obstructions prior to the first day of October in each year, and if the said commissioners order the removal of said planks or other obstructions after the first day of October in any year, the plaintiffs shall not have leave to replace the same until the fifteenth day of March of the following year, nor at that time unless the commission shall so decide; but whenever the water of Utah Lake recedes down to the elevation before designated, the plaintiffs shall have the right to place said obstructions in the river at the dams, without the permission of said commissioner. But when, at any time on or after the first day of October in any year, the said commissioners shall have ordered the plaintiffs to remove said planks or obstructions in said

"The above starred was written in long hand on original copy."

dams the said plaintiffs shall remove the same and the waters of the said river shall be permitted to run free and unobstructed from such obstructions until on or after the fifteenth day of March in the following year and until the commission shall decide that obstructions may be placed in said dams, or until the said waters shall have receded to the elevation hereinbefore designated. The planks and obstructions mentioned herein do not refer to the fourteen inches of planks that the plaintiffs are authorized to keep and maintain upon the floor or sill of the new dam at all times, as found in the findings of fact herein, but are in addition thereto.

5th. That the plaintiffs are entitled to an injunction perpetually enjoining and restraining each and all of the defendants to this suit, except George T. Peay, from bringing, maintaining or prosecuting any suit for any damages heretofore sustained by them or any of them by reason of any acts of the plaintiffs or any of them in placing obstructions in the Jordan River at the new dam or elsewhere, or in any way causing the waters of Utah Lake to overflow or otherwise injure the lands or other property of the said defendants or any of them, except George T. Peay, or by causing any damage to the defendants or any of them in any way whatever; Provided, that this conclusion shall not be so construed as to prevent the defendants or either of them from bringing any suits against the plaintiffs or either of them for any future violation of the terms of the contract, or of the decree herein.

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6th. That each party shall pay their own witness fees, and the balance of the costs shall be apportioned as follows: *the plaintiffs shall pay one half (1/2) of all other costs, including ~~costs~~ costs of serving summons on the defendants, clerks costs and reporters fees, and the defendants shall pay the other half (1/2) of said costs."*

Dated January 3, 1896.

Signed William H. King

Judge.